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Supreme Court, U.S.
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MAR 5 2003

No. 02-1040

In The
Supreme Court of the United States

COUNTY OF RIVERSIDE,

Petitioner,

v.

TRACY L. WATSON,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

SUPPLEMENTAL BRIEF

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SUPPLEMENTAL BRIEF

Petitioner wishes to call to the Court's attention two new cases filed after the petition was filed which highlight the direct conflict between the Ninth Circuit and all other circuits.

Cases from other circuits

In *John T. v. Del. County Intermediate Unit*, ___ F.3d ___, 2003 U.S. App. Lexis 1738 (3rd Cir. 2003), the court held that a preliminary injunction does not confer prevailing party status, even though based on a reasonable probability of success, unless it is based on the merits.

> The Preliminary Injunction is an insufficient basis on which to award attorney's fees to John T. because it is interim relief not based on the merits of John T.'s claims. . . . Although the District Court concluded that John T. "ha[d] shown a reasonable probability of success on the merits," it did not resolve any merit-based issue in John T.'s favor.

The court also held that an order finding the defendant in contempt of the preliminary injunction did not confer prevailing party status.

> We conclude that we must consider the Contempt Order in its relation to the underlying relief that it enforces. . . . Under *J. O.*,[1] the Preliminary Injunction is an insufficient basis on which to deem John T. a prevailing party. Accordingly, the

[1] *J. O. v. Orange Township Board of Education*, 287 F.3d 267 (3rd Cir. 2002), a case cited in the petition.

Contempt Order that enforces it is also insufficient.

Cases from the Ninth Circuit

In *Richard S. v. Department of Developmental Services*, 317 F.3d 1080 (9th Cir. 2003), the district court denied an award of attorney's fees because the preliminary injunction upon which the award was sought was not based on the merits. Relying on *Watson*, the Ninth Circuit reversed, holding that *any* preliminary injunction automatically supports an award of attorney's fees.

> The district court found that plaintiffs' "success on their Preliminary Injunction cannot be the basis for 'prevailing party' status because it only preserved the status quo, and was not based on the merits of the claims." [Citation] In reaching this conclusion, the district court relied solely on other circuit's conclusions and overlooked this court's findings in *Williams v. Alioto*, 625 F.2d 845 (9th Cir. 1980).
>
> In *Williams*, we held that a plaintiff who obtains a preliminary injunction is a prevailing party for purposes of 42 U.S.C. § 1988 even if the underlying case becomes moot:
>
> > We conclude that by obtaining the preliminary injunction appellees "prevailed on the merits of at least some of (their) claims." The preliminary injunction prevented appellants from continued enforcement of their original guidelines, which is precisely the relief appellees sought. Appellees succeeded on a "significant issue in litigation, which achieve(d) ... the benefit the

> parties sought in bringing suit." Our previous dismissal of the appeal as moot and vacation of the district court judgment does not affect the fact that for the pertinent time period appellees obtained the desired relief. . . .

Williams, 625 F.2d at 847-48 (citations omitted). Furthermore, subsequent to the district court's ruling that plaintiffs were not the prevailing party based on their preliminary injunction, we held that "a plaintiff who succeeds in obtaining a preliminary injunction can be deemed a 'prevailing party' for purposes of 42 U.S.C. § 1988, even though he did not recover other relief sought in the lawsuit." *Watson*, 300 F.3d at 1093.

We therefore find that the district court erred as a matter of law when it denied plaintiffs prevailing party status based on their success in obtaining a preliminary injunction. We remand this issue in light of our statements of the law in *Williams* and *Watson*.

Respectfully submitted on March 3, 2003.

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